XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.322/2005

APPELLANT (In Jail) — Basant, S/o Shiv Ratan, Aged about 36 years, R/o Village Jobga, P.S. Surajpur, Disrict Sarguja (CG).

Vs

RESPONDENT — State of C.G. through: P.S. Surajpur, Distt Surguja (CG)

Present:
Mr. A.K. Shukla, Advocate for the appellant.
Mr. Neeraj K Mehta, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(23rd November, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 24.3.2005 passed in S.T. No.97/99 whereby learned 1st Additional Sessions Judge, Surajpur, Sarguja has convicted the appellant herein under Section 376 of Indian Penal Code (for short 'IPC') and sentenced with R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for 2 months.

Case of the prosecution, in brief, is that on 12.1.1998 when the prosecutrix was returning her home after attending the call of nature in her matrimonial home, appellant Basant caught her from behind and laid her down on the ground. Another accused, who is son-in-law of Jagmohan, caught both her hands. Accused Basant committed rape with her. The prosecutrix raised alarm and on hearing the alarm of prosecutrix, her brother-in-law Laxman came from her home and on seeing him both the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused persons fled from there. On the next day at 12.00 noon the prosecutrix lodged the report (Ex.P-1), she was sent for medical examination to Community Health Centre, Surajpur where Dr. Shipra Shrivastava (PW-2) examined her and gave her medico legal report of Ex.P-4.

After completing investigation, the charge sheet was filed against the appellant and co-accused Devnath for the offence punishable under Section 376 (2) (g) of the IPC and accordingly charge under Section 376 (2) (g) of IPC was framed against both the accused persons. During trial, the prosecution examined 10 witnesses in all and thereafter statements of the accused persons was recorded under Section 313 of the Cr.P.C. in which the appellant herein denied the evidence available against him in the prosecution case and took a defence that father-in-law of the prosecutrix was involved in the theft of Nagar-Jua, they have given evidence against him in the panchayat and because of this animosity he has been implicated in the false case. Two defence witnesses namely Shantidevi (DW-1) and Adal (DW-2) were also examined by the defence.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, acquitted the appellant and co-accused from the charge under Section 376 (2) (g) of the IPC, however, convicted the appellant herein under Section 376 of the IPC and sentenced him as mentioned in Para-1 of this judgment.

XI-HC—78

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for the appellant argued that except prosecutrix all other witnesses including Chameli (PW-7) & Laxman (PW-8) have not alleged that the appellant committed rape with the prosecutrix and they have only made allegations of eve teasing. He further argued that from perusal of the conduct of the prosecutrix it would be evident that she raised alarm only after the offence was completed, as witnesses reached at the place of incident after hearing the alarm only and saw the appellant running away from the place of incident, and thus, the possibility of prosecutrix being a consenting party cannot be ruled out.

On the other hand, learned counsel for the State supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

Conviction of the appellant is based on the statement of the prosecutrix (PW-1), Chameli (PW-7) & Laxman (PW-8).

The prosecutrix (PW-1) has deposed that around 7.00 p.m. while she was returning after attending the call of nature, the appellant caught her waist, threw her on the ground and thereafter committed rape with her. Accused Devnath was holding her hands. On her shouts, Laxman reached there and on seeing him the accused persons fled away. In the cross-examination she has expressed her ignorance about any panchayat being convened in the village regarding the theft of Nagar-Jua of Aadal

Gond, as she had returned from her maternal home after staying there for a week. She has denied the suggestion that she lodged the report on the next date of panchayat. There is no cross-examination of this witness by the defence regarding commission of offence of rape and virtually allegations made by the prosecutrix in her statement regarding commission of rape by the appellants' stands un-rebutted.

Chameli (PW-7) has also stated that at the time of incident darkness has set-in, she heard the shouts of prosecutrix, when she went towards that side, she saw the appellant running away towards forest. Prosecutrix told her that accused Basant had caught her and spoiled her i.e. he had raped her honour and saying this she started weeping. Laxman was also present. However, she did not see co-accused Devnath. She has denied the suggestion of defence that in the panchayat convened in the village allegation of theft of Nagar-Jua was made against her husband, he was directed to return Nagar-Jua and because of this incident the appellant has been implicated the accused persons in a false case through the prosecutrix.

Laxman (PW-8) has also deposed that on hearing the shouts of her Bhabhi (prosecutrix), he ran towards forest and saw Basant fleeing from there. No one was accompanying Basant. The prosecutrix told her that the appellant was robbing her honour. This witness has denied the suggestion of the defence that theft was committed in the house of

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Shivcharan after breaking the wall just 3-4 days before the incident, his father was caught by the accused persons and he was beaten by both the accused persons. This witness has also denied the suggestion that Nagarjua theft was committed by his father. He has further denied that just to escape from the charge of theft he, his father and other family members have falsely implicated the appellant.

After going through the statement of the prosecutrix and the above two witnesses it is manifestly clear that the version of the prosecutrix regarding commission of rape by the appellant stands unrebutted. Her version is duly corroborated from the statement of Chameli (PW-7) & Laxman (PW-8), who have deposed that they heard the shouts of the prosecutrix, whereupon, they went towards the place of incident and saw the appellant running away from the place of incident and the prosecutrix narrated about the commission of rape to them immediately after the incident.

So far as the defence of the appellant that the father-in-law of the prosecutrix was caught red handed while attempting to commit theft in the house of Shivcharan, the appellants beat him and because of this animosity he falsely implicated both the accused persons through the prosecutrix is concerned, except bald allegations by way of suggestions to the prosecution witnesses, no other evidence in the form of report to the police or registration of any offence against the father-in-law of the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prosecutrix has been filed and proved by the defence during trial and therefore, in the considered opinion of this Court simply on the basis of above suggestions the version of the prosecutrix, which stands unchallenged, cannot be doubted.

Other argument advanced by learned counsel for the appellant that the prosecutrix did not raise alarm immediately after the incident, as the persons who reached at the place of incident after hearing alarm only saw the appellant running away and thus, the prosecutrix was a consenting party is concerned, no such defence has been taken by way of suggestions to the prosecutrix and the conviction of the accused can be founded on the solitary testimony of the prosecutrix, if the same is not challenged by the defence.

In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

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